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SUPREME COURT FOR THE
UNITED STATES OF AMERICA
OCTOBER TERM 1988

CARLA J. PARRILLO :

VS. : NO.: 89-

JUSTIN PARRILLO :

On Certiorari from the
Supreme Court of Rhode Island

PETITION FOR WRIT OF CERTIORARI

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Dated: June 28, 1989

112 pp

MAY THE STATE ENTER INTO THE PRIVATE REALM OF FAMILY LIFE BY REGULATING THE CIRCUMSTANCES UNDER WHICH AN UNMARRIED CUSTODIAL PARENT MAY ENGAGE IN SEXUAL RELATIONS WITHOUT SPECIFIC FINDINGS THAT THE PARENT'S SEXUAL CONDUCT ADVERSELY AFFECTS HER CHILDREN'S WELFARE?

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I. FACTS AND TRAVEL

a) Jurisdiction:

On March 7, 1989 the State of Rhode Island Supreme Court rendered an opinion (Appendix A) affirming a decision (Appendix D) of a State of Rhode Island Family Court Justice in the matter of Justin A. Parrillo, Jr. v. Carla J. Parrillo. Petitioner, Carla J. Parrillo, seeks review of that March 7, 1989 court opinion. By utilizing an unlawful presumption which deemed that the Petitioner's sexual conduct must adversely affect her children, the decisions of the Rhode Island trial and state supreme courts deprived Petitioner of Due Process of Law as guaranteed by the Constitution of the United States Fourteenth Amendment...

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Constitution of the United States Amendment Fourteen.

The state court decisions also abrogated Petitioner's fundamental liberty interest in managing the care, custody and control

of her children as well as her right to privacy as guaranteed by the Constitution of the United States First and Fourteenth Amendments...

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances."
> Constitution of The United States, First Amendment.

The Rhode Island Supreme Court is Rhode Island's court of last resort. In passing on the case at hand it has passed on issues which are federal questions and questions which should be settled by the highest court of the land. When it rendered its opinion in Parrillo the Rhode Island Supreme Court ruled in conflict with its own previous and applicable decisions as well as the decisions of this Court. This Court and the Rhode Island Supreme Court have provided certain procedural and substantive safeguards which derive from the First and Fourteenth Amendments to the Constitution of the United States. In permitting the use of an irrebuttable presumption where the conclusion to be reached is not universally true (i.e. an unmarried parent's sexual conduct must

adversely affect her children's psychological well being) the Rhode Island court abrogated the Petitioner's personal liberty interests, her interest in rearing her children free from governmental intrusion. The initial due process violation gave rise to secondary, but just as important, First and Fourteenth Amendment deprivations. There can be no greater justification for this Court's review.

b) Statement of the Case:

Justin and Carla Parrillo were divorced by final judgment of divorce on May 14, 1986. Pursuant to the terms of that judgment, the Parrillos were awarded joint custody of their minor children Albert, Olivia and Candace. Physical possession of the children was awarded to Carla Parrillo subject to reasonable rights of visitation in Justin Parrillo.

On June 9, 1986 Petitioner moved to modify the final judgment calling for specific hours of visitation and a specific child support award. At the same time, she filed a complaint for contempt against Justin Parrillo based on his alleged violation of certain provisions of the final judgment

including an order that he refrain from harassing his former wife and that he refrain from interfering with his former wife's relationship with the minor children. Justin Parrillo objected to his former wife's motions and filed his own motion to modify the judgment on August 4, 1986. Justin Parrillo based his motion on a change in circumstances towit: the fact that Petitioner Carla Parrillo had a male companion living in her home. Justin Parrillo asked that the Court issue an order restraining Petitioner from permitting that man and any unrelated male from staying over-night in her home during the same period of time in which the children were present in the home. During the course of the family court trial, Petitioner testified thather relationship with her former husband

deteriorated when she began her relationship with the gentleman in question. She also testified that her children would come home angry or sad, after visits with their father, as a result of things their father said to them on those visits. The children, in an interview with the trial justice, indicated that they were often unhappy when they ended their visitation with their father because it meant school the next day. They also told the trial justice that they liked their mother's gentleman friend most of the time. The children said that their mother's friend cooked on occasion and wore a jogging suit when relaxing around the home. Justin Parrillo testified that he thought his children did not like their mother's living situation. Counsel for Petitioner

offered to have the children evaluated by a qualified psychologist but this was declined by the court. No other evidence was presented with respect to the children's psychological functioning. The record stands devoid of any evidence that the children witnessed any conduct of a sexual nature between their mother and her friend.

After hearing, the court made findings that Petitioner had permitted her gentleman friend to stay overnight in her home about three (3) nights per week. The court found that Petitioner could not be faulted for her care of the children pointing out that, in fact, the children appeared to be well cared for. The court also concluded that the children were unhappy about the fact of Petitioner's

gentleman friend sleeping overnight, that they weren't prepared for it and that it had an effect on them. In making that conclusion, the court did not refer to any supporting evidence. (Appendix B 1-9)

The trial justice then went on to draw the inference that the situation was not conducive to the psychological welfare of the children. He pointed out that if the Petitioner were married to the man in question, the court could not prohibit her behavior. The trial justice restrained Petitioner from allowing her gentleman friend, and any male to whom she was unrelated, to sleep overnight in her home when her children are also in the home. (Appendix B 3-6; D 2, 3)
In making his decision, the trial justice stated, "The wife has a right as though

she was single to have a relationship with anyone she chooses, but to bring the man into her bedroom and in the presence of the three children who are really intelligent children... However, her conduct --- And she's admitted on the stand that she slept with this man...The court must infer that this situation is not conducive to the welfare of the children, at least from the psychological welfare of the children...The court doesn't feel that this is a suitable arrangement for the children to be put into. If she married this man, he's the step-father, nothing could be done about it, but under the situation, the court finds that it is not conducive to the best interests of the children." (Appendix B 2-7)

In comments to counsel during trial

(Appendix C-39) the trial justice pointed out that "and you think we're going to permit a situation where there is no intentions of marriage to continue such as we got the facts here? To continue on indefinitely?" The court also commented, during trial, "It would seem to me that a 13 year old boy or girl who sees their mother sleeping with another man that she's not married to, might have problems, and it's demonstrated time and again in divorce cases." (Appendix C-8).

At the time of the trial justice's comments, trial counsel made a timely objection to those comments and the trial justice's assumption that the Petitioner's living situation was not conducive to the psychological welfare of the children. (Appendix C-6-9, 38-40).

The trial justice responded by commenting as noted above and acknowledged the objection by responding "All right" (Appendix C-40).

On appeal to the Rhode Island Supreme Court, the issue was presented as one of First and Fourteenth Amendment deprivations. The State of Rhode Island Supreme Court stated in it's opinion that "notwithstanding the views of [Petitioner's] appellate counsel to the contrary, see no great constitutional issue in this controversy." (Appendix A-9). The federal question was timely and properly raised at the time of trial and in the state court appeal. (Appendix A-5,9)

II. QUESTION PRESENTED

MAY THE STATE ENTER INTO THE PRIVATE REALM OF FAMILY LIFE BY REGULATING THE CIRCUMSTANCES UNDER WHICH AN UNMARRIED CUSTODIAL PARENT MAY ENGAGE IN SEXUAL RELATIONS WITHOUT SPECIFIC FINDINGS THAT THE PARENT'S SEXUAL CONDUCT ADVERSELY EFFECTS HER CHILDRENS WELFARE?

III. ARGUMENT

Until the time of the Parrillo decision, the State of Rhode Island Supreme Court had clearly recognized the liberty interests of natural parents in governing the custody, care and management of their child, In Re Kristina L., 520 A2d 574 (RI 1987). In Re Kristina L. was a Rhode Island Supreme Court case which defined the parameters within which the State of Rhode Island, through its Family Court system, could terminate a natural parent's right to its child. In that opinion, the Rhode Island court correctly adopted a balancing test which required a trial justice considering such an issue to weigh three competing interests: the state, the child, and the natural parents, Ibid p. 579. Citing Stanley

v.Illinois 405 US 645 (1972) and Prince v.Massachusetts 321 US 158 (1944) the Rhode Island court held that "absent a finding that [a parent is] unfit, the state's interest in caring for the child is de minimus", ibid p. 580. The court further observed that once a parent was determined to be unfit, the best interests of the child out-weigh all other considerations but that the finding of parental unfitness is the necessary first step, ibid p. 580. Prior to Parrillo, then, Rhode Island had correctly identified the right of a parent to rear a child unfettered without interference from the government as a right protected by the Constitution of the United States, Stanley v. Illinois, supra; Prince v. Massachusetts, supra; In Re Kristina, supra. Not until a parent

is found to be unfit as a custodial parent, the Rhode Island Supreme Court has held, does the state's interest in determining the child welfare begin to predominate as a competing and compelling interest, Stanley v. Illinois, supra; In Re Kristina, supra p.580.

The Rhode Island Supreme Court decision in In Re Kristina L. as well as this Court's decisions in Stanley v. Illinois and Prince v. Massachusetts all flow from the fundamental proposition that "the Constitution embodies a promise that a certain private sphere of individual liberty will be kept largely beyond the reach of government," Thornburgh v. American College of Obstetricians & Gynecologists 476 US 747, 772 (1980).

The private realm of family life

including a parent's freedom to manage the care and custody of a child have been undeniably protected by the First and Fourteenth Amendments to the United States Constitution, Thornburgh, ibid; United States v. Orito 413 US 139 (1973); Roe v. Wade 410 US 113 (1973); Stanley v. Illinois supra; Eisenstadt v. Baird 405 US 438 (1972); Stanley v. Georgia 394 US 557, 565 (1969); Griswold v. Connecticut 381 US 479 (1965); Prince v. Massachusetts supra. A custodial parent's right to privacy, both in conducting his or her own personal affairs and in rearing his or her child, are well rooted in the Constitution of the United States and its privacy penumbras The right to privacy is a fundamental right which can be intruded upon only in limited circumstances. The

Constitutional progression evidenced by Griswold v. Connecticut, Stanley v. Georgia, Eisenstadt v. Baird, Roe v. Wade, and Thornburgh has made axiomatic the concept that, if the First Amendment means anything, it means that a state has no business telling any individual, alone in the privacy of one's home, how one must conduct one's affairs and that the state has no right to control the moral content of one's own thoughts, Stanley v. Georgia, supra; Griswold v. Connecticut, supra; Eisenstadt v. Baird, supra; Roe v. Wade, supra; Thornburgh v. American College of Obstetricians & Gynecologists, supra. "Fundamental," held this Court in Stanley, "is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy," Stanley v. Georgia, supra

p. 564. While this Court narrowed that broad concept in Roe v. Wade by determining that the Constitution does not explicitly mention any right of privacy, the Court has traditionally recognized that a right of personal privacy, founded in the First Amendment, does exist under the Constitution and that the right of privacy extends to such inherently personal issues such as activities relating to marriage, procreation, contraception, family relationships and child rearing, Roe v. Wade, supra p. 152-153. This Court's holding in Prince v. Massachusetts, already adopted by the Rhode Island Supreme Court in In Re Kristina, identifies substantially two parental rights: the parent's individual right to privacy in the broad sense of

determining his or her own moral standards and the parent's right to rear his or her child in accordance with those standards.

Thus, Rhode Island has soundly echoed and endorsed the concept of the parents' liberty interest in raising a child as well as an individual's liberty interest in remaining free from governmental intrusion. It has adopted this Court's line of decisions which go back as far as Stanley v. Georgia and have recognized that a right of personal privacy, a guarantee of certain areas or zones of privacy, exist under the Constitution, the penumbras of the Bill of Rights, and the Fourteenth Amendment. Stanley v. Georgia supra p 565 (1969); Olmstead v. United States supra p 478; Griswold v.

Connecticut supra; Meyer v. Nebraska 262 US 390, 399 (1923). Although the parameters of the right to privacy have charged with time and interpretation, this Court has always made it clear that personal rights are fundamental, Roe v. Wade, 410 US 113 (1973). Griswold v. Connecticut, supra; Eisenstadt v. Baird, supra; Prince v. Massachusetts, supra. Decisions of the Rhode Island State Supreme Court take no issue with the decisions of this Court and have embraced the ever maturing right of privacy, In Re Kristina, supra; In Re David, 327 A2d 795, 801 (RI 1981); In Re Johnathan, 415 A2d. 1036, 1039 (RI 1980).

Perhaps because the issues in Parrillo touch neither on a change in custody nor

a termination of parental rights both the trial justice and the State of Rhode Island Supreme Court failed to apply the law of Rhode Island as well as the law of this Court. The trial justice imposed upon Petitioner what he stated he believed was in the best interests of the Parrillo children notwithstanding A) his failure to address the threshold question of Carla Parrillo's fitness for custody, B) his failure to make any specific factual findings that would support the conclusion that the Parrillo children suffered any psychological harm of any kind and, C) his failure to make any specific factual findings that would support the conclusion that it was Petitioner's sexual conduct which had adversely affected the children's mental well being. In short, the trial justice

declined to make specific findings of fact and then balance the competing interests at stake. By affirming the trial justice's decision and endorsing the absence of findings on Petitioner's fitness as a parent, actual harm caused to the children and a causal connection between her sexual conduct and that harm, the State of Rhode Island Supreme Court rendered an opinion not only in conflict with the decisions of this Court and other state courts on the issues of personal and parental privacy, it fell far short of reaching the standard set in its own In Re Kristina.

There can be no argument that the state's interest in protecting a minor child is an interest worthy of superceding the parental privacy right under appropriate

circumstances. Hence, the Rhode Island Supreme Court, as is the case in many jurisdictions, previous adopted the "best interest" test for determining issues relevant to the care and custody of minor children, Kenney v. Hickey 486 A2d 1079 (RI 1985); Saravo v. Saravo No. 87-37 (5-26-87 RI); In Re Kristina, supra. The trial justice, albeit indirectly, appeared to adopt the "best interest" test in making the Parrillo decision when he made reference to the adverse consequences he believed the children to be suffering as a result of the petitioner's conduct (Appendix B-3, 3, 4). Similarly, he seemed to recognize that Petitioner had a right which could not be interfered with so long as those best interests of the minor children were not sufficiently countervailing. The

trial justice failed, however, to identify the competing interests, determine the comparative weight of each and failed to base his determination of the children's best interests on facts which were elucidated on and supported by the record. The state court transgressed both the concept of Due Process of Law and personal liberty interests by failing to address the "best interests" test within the confines of the appropriate Constitutional parameters.

With the fitness of Petitioner as a mother and custodial parent standing unchallenged, it was only through the operation of a presumption or "inference", as the trial justice called it, that the state found its entre into the realm of Petitioner's home. The

operation of that presumption worked to compound the abrogation of the personal and parental liberty interests. While the trial justice may have made his decision with a notion that the children's best interests outweighed the parental right and the Petitioner's personal liberty interests, he arrived at that conclusion by using an unlawful, irrebuttable presumption. The use of a presumption, or inference as the trial justice called it (Appendix A-5; C 1-42; D-4), is violative of the Due Process clause of the Fourteenth Amendment to the Constitution of the United States when that presumption is not necessarily or universally true, Vlandis v. Kline 412 US 441 (1973), Stanley v. Illinois, supra. The clear inference drawn by the trial justice and sustained by the State of

Rhode Island Supreme Court was that the mere fact ofPetitioner's gentleman friend staying overnight in her home at the same time as did her children, meant the children suffered adverse psychological impact. The trial transcript (C 2, 5, 7-10, 39) is replete with comments which imply that part of the psychological harm purportedly done to the children is also somehow connected with the Petitioner's lack of intention to marry. The presumption, then, is that where a custodial parent engages in in-house sexual activity with no intention of marriage there must be some adverse psychological impact on her children when they stay in their own home at the same time the parent is engaging in the conduct. Not only is the use of this presumption unlawful because the

presumption itself is not universally true, the use of the presumption in thiscase is doubly offensive because it engenders governmental interference with the parent's liberty interests in managing the care, custody and control of her children as well as her fundamental right to privacy. Not only was Petitioner deprived of Due Process of Law when the presumption was applied, but the result of that deprivation was the consequential deprivation of two more fundamental rights. The Rhode Island courts wrongly utilized a presumption, already inherently violative of Due Process, as a substitute for proof which might have demonstrated the necessity of the infringement on Petitioner's dual liberty interests. Neither the record in this case or common sense justify the

presumption that a custodial parent's sexual activities, whether the parent is married or not, must absolutely have any impact on children let alone an adverse impact. By drawing such a vague inference the Rhode Island Courts denied Petitioner any fair opportunity to rebutt that and protect her liberty interests. By stripping her of her right to Due Process of Law, both the trial court and the Rhode Island Supreme Court left Petitioner empty handed in her defense of her First Amendment right to conduct her own affairs and raise her children free from governmental interference. While the use of the presumption may not have been pursuant to statute or specifically enunciated by either state court, the record is clear that a presumption was, at least, covertly applied and that any

opportunity Petitioner may have had to rebutt that presumption was illusory - one cannot and should not realistically be expected to rebutt speculative conclusions that have no basis in fact, Viandis v. Kline, supra; Child Custody, University of Cincinnati Law Review Vol. 6, No. 3 (1977); In Re Wellman 164 Cal Rptr 148 (1980).

Paralleling the substantive and procedural Due Process deprivations which Petitioner has encountered is the equal protection violation present in the state court decision and appellate opinion. The fact that petitioner engaged in non-married sexual activity was an important consideration in the trial court's decision. (Appendix B-3, 4, 6). Where discriminatory treatment interferes

with a fundamental liberty interest protected

by the First Amendment, the discriminatory treatment cannot be justified unless it is necessary to promote a compelling state interest, In Re Wellman, supra; Child Custody, University of Cincinnati Law Review Vol. 46, No. 3, p. 712 (1977). It has already been well established that, until a parent is deemed unfit, the state's interest in child rearing is de minimus as a matter of law, Stanley v. Illinois, supra.

IV. CONCLUSION

By using an irrebuttable presumption that her sexual conduct must be harmful to her children, the trial justice and Rhode Island Supreme Court deprived Petitioner of not only her liberty interest in managing the care, custody and control of her children but her fundamental right to be free from government interference within the confines of her own home. The dual liberty interests violated here should not have been abrogated without specific findings, established on the basis of individualized proof with respect to Petitioner's fitness or unfitness as a custodial parent, and a balancing of the competing interests at stake. Both the specific findings of fact and the weighing of the competing interests

should have been elucidated as part of the lower court record. Only after clear identification of the competing interest at stake, the nature of the compelling interests and the specific facts at issue can trial courts be expected to render decisions consistent with children's best interests and the rights of parents. Only with clear elucidation and specific findings of fact can individuals, including parents, be expected to defend their constitutionally protected interests in any meaningful way.

Both the Due Process Clause and the First Amendment require that the integrity of the family unit be protected from unwanted governmental intrusions except in very limited circumstances. A careful application of a competing

interests test, based on specific findings of fact, will protect both the procedural and substantive rights of individuals, parents, and children without sundering the states' obligation to protect minor children through a judicial determination of their best interests. To preclude a parent from determining the circumstances of her home environment, including its moral tone, requires a powerful countervailing interest. That interest must be determined on the basis of fact and must be carefully elucidated. Otherwise, the result will be that of the Rhode Island Supreme Court in the Parrillo decision. That decision, as it stands, permits a state trial court to regulate the conduct of a fit and proper custodial parent in her own home. That same trial court, if

it were to attempt to terminate a parent's right to a child, could not regulate that parent's conduct absent a procedurally protected findings of unfitness. Surely, the state should not have a greater right to regulate the activities of a fit custodial parent than it does the parent that is deemed to be unfit.

Petitioner prays this Court grant Certiorari.

Respectfully submitted,

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Dated: June 1, 1989

CERTIFICATION

I, Patricia A. Hurst, Attorney at Law hereby represent and certify that I am admitted to practice before the Supreme Court of The United States of America and have been since October 13, 1987. I am presently licensed to practice law in the State of Rhode Island and am in good standing therein. I further represent and certify that I mailed, by express mail, postage pre-paid 40 copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of The United States of America, One First Street North East, Washington, D.C. 20543, on June 2, 1989 as well as 3 copies of the foregoing Petition for Writ of Certiorari to Thomas DeSimone, Attorney at Law and Counsel for Record for Respondent, Justin A. Parrillo, 380 Broadway, Providence, RI 02903 on even date. This Petition for Writ of Certiorari has been mailed and served within the time limit for filing pursuant to Rule 19 of The Supreme Court Rules.

Patricia A. Hurst

Patricia A. Hurst
Attorney at Law

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence on this 2nd day of June, 1989 before me personally appeared Patricia A. Hurst to me known and known by me to be the party executing the foregoing instrument and she acknowledged said instrument by her executed to be her free act and deed.

Noreen C. Paige

NOTARY PUBLIC
Noreen C. Paige
My Commission Expires:
June 30, 1991

March 7, 1989

Supreme Court

No. 86-512-Appeal

Justin A. Parrillo, Jr.:

v. :

Carla J. Parrillo. :

OPINION

KELLEHER, J. This Family Court appeal introduces us to Justin and Carla Parrillo, their three minor children, and Carla's live-in lover, Joseph DiPippo. Justin and Carla Parrillo were divorced by a final judgment of divorce entered in the Family Court in mid-May 1986. At that time their oldest child was thirteen and their youngest was eight. Physical possession of the children was awarded to Carla, with Justin having reasonable visitation rights. In early June 1986 Carla returned to the Family Court,

seeking to modify the final judgment by establishing specific times when Justin would exercise his visitation rights at a location away from what had been the marital domicile. Justin responded by filing a motion to modify the final judgment by having Carla restrained from permitting any "unrelated males" to stay overnight at her residence.

The respective motions came on for a hearing before a Family Court justice in late October 1986. Carla told the trial justice that Justin began to harass her once he learned she was dating Joseph. Carla acknowledged that Joseph would remain overnight "[o]nce or twice a week behind closed doors." Carla saw no risk to the children, who were present when Joseph was staying overnight, because, she explained, the daughters slept in separate bedrooms about twenty feet away

from her bedroom and the son's bedroom was downstairs. When asked if Joseph wore his pajamas in front of the children, Carla explained that when Joseph stayed overnight, he wore a jogging suit. She explained to the trial justice that the children liked Joseph but that she had no intention of marrying him in the near future.

Justin began to reduce his support payments once he learned that Joseph was making his nocturnal visitations.

With the consent and in the presence of counsel, the trial justice met with the three children in his chambers. All the children said they got along well with Joseph, although the son did say that there were times he did not like him.

In a bench decision given immediately after the presentation of the evidence,

the trial justice stated that the children "appear to be well cared for" and that he could not fault the mother's care of her children. However, he did observe that Joseph's overnight visits, in the presence of the children, were not conducive to their general well-being, at least in terms of their psychological welfare. The trial justice did observe that if Carla married Joseph, he would become the children's stepfather and the cohabitation[1] issue would become moot.

The trial justice directed Carla to refrain from allowing any "unrelated males" to stay overnight at her residence when the children were present.

Carla argues that the trial justice erred when he entered the order because

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[1] In using the term "cohabitation", we are referring to sexual relations.

there was no evidence showing that her sexual relationship "with her lover" was not conducive to the psychological well-being of her children. Again, Carla's counsel also emphasizes that when a female custodial parent is otherwise deemed fit and there is an absence of any evidence indicating that her sexual relationship with her companion has had an identifiable adverse effect upon her minor children, the trial justice may not infer that such relationship is not conducive to her children's best interests.

The Family Court retains jurisdiction over the custody of the minor children of divorced parents regardless of whether custody was initially established by judicial decree or agreement of the parents. Kenney v. Hickey, 486 A.2d 1079, 1082 (R.I. 1985); Cambra v. Cambra,

114 R.I. 553, 556, 336 A.2d 842, 844 (1975). However, jurisdiction should only be exercised when the party seeking the modification shows by a fair preponderance of the evidence that the circumstances and conditions that existed when custody was decided have been changed or altered. Veach v. Veach, 463 A.2d 508, 510 (R.I. 1983); Cambra v. Cambra, 114 R.I. at 566, 336 A.2d at 844. Upon the movant's meeting this burden, the court is free to decide whether the requested modification is warranted.

Many jurisdictions have considered this type of living arrangement in the context of a motion to modify a custody decree. These cases almost universally hold that such an arrangement is a sufficient change to warrant the consideration of the best interests of the children. Ketron v. Ketron, 15 Ark.

App. 325, 692 S.W.2d 261 (1985); Walden v. Walden, 483 So.2d 87 (Fla. Dist. Ct. App. 1986); In re Custody of McGuire, 487 N.E.2d 457 (Ind. App. 1985). A small number of courts have held that the sexual misconduct of the custodial parent, while the children are present in the home, is adequate reason to modify the custody decree, even in the absence of any evidence of detrimental effect on the children. Small v. Small, 412 So.2d 283 (Ala. Civ. App. 1982); Bagents v. Bagents, 419 So.2d 460 (La. 1982). However, the vast majority of courts considering the issue decline to adopt this approach and instead consider the parent's misconduct as a factor in determining the best interests of the children. Ketron v. Ketron, supra; Walden v. Walden, supra; In re Custody of McGuire, supra. These courts hold that

an award of custody will not be modified absent a showing that the parent's living arrangement has a detrimental effect upon the children.

This court, in Vieira v. Vieira, 98 R.I. 454, 204 A.2d 431 (1964), approved a change of custody from the mother to the father because six days after granting the father's petition for a divorce on the grounds of gross misbehavior, the mother and the children spent the night a a New Hampshire motor lodge. Present at the lodge was the male whose association with the mother caused the divorce. This court, in commenting on the trial justice's action, observed "it cannot seriously be questioned that the best interests of these children could no longer be served by continuing their custody in their mother. The harmful effect of her conduct on children of

tender years and at impressionable ages cannot be doubted." Id. at 458, 204 A.2d at 433.

However, in this dispute no change in custody has been ordered by the Family Court. In entering the order that was without question directed at Joseph, the trial justice, in simple and direct language, ordered the mother to forgo any overnight visitations with Joseph on those occasions when the children are present. We cannot fault the trial justice's actions. Joseph may still visit the marital domicile overnight, with the exception of those times when the children are with their mother. Notwithstanding the views of Carla's appellate counsel to the contrary, we see no great constitutional issue in this controversy.

The mother's appeal is denied and dismissed. The order entered by the Family Court is affirmed.

Chief Justice Fay did not participate.

STATE OF RHODE ISLAND AND

PROVIDENCE PLANTATIONS

PROVIDENCE, SC. FAMILY COURT

JUSTIN A. PARRILLO, JR.

VS. P85-3220

CARLA J. PARRILLO

D E C I S I O N

GOLDBERG, C.J.

This is a Motion to Adjudge In Comtempt brought by Carla Parrillo against her former husband, Justin A. Parriollo, Jr. The allegation is that he violated the Judgment by continually harassing, annoying and threatening the Defendant thorugh telephone calls and in person; and, further by speaking in

derogatory and derisive terms to the children which has tended to cuase estrangement and is hampering the natural development and love for the Defendant.

The Court finds that that has not been proven by a fair preponderance of the evidence and the Court will not adjudge the Plaintiff in contmept for what has occurred.

As to the Motion To Modify, the Defendant further requested that the Plaintiff has been dilitory in providing support as called for in the Agreement between the parties. This is a very broad Agreement. A very liberal Agreement which the husband has made with reference to support of the wife and children. Apparently he's already conveyed the real estate to the wife. That was in Paragraph Seven (7) of the

Property Settlement Agreement. Now the question is as to whether he should maintain the property and continue his obligations to pay mortgage payments and taxes and insurance, and even if the wife bought a new parcel of property he would do the same thing.

The Court finds that that does not emcompass maintenance of the property, and the request to find him in contempt for that reason is denied.

Now, we have another situation where on DiPippo is living in the home with the children and the former wife. The parties are divorced. The wife has the right as though she was single tohave a relationship with anyone she chooses, but to bring the man into her bedroom and in the presence of the three (3) children who are really intelligent children, thirteen (13), ten (10) and eight (8),

Olivia being in the sixth (6th) grade, Albert in the seventh (7th) grade and Candace is in the third (3rd) grade, they appear to be well cared for children. The Court cannot fault the mother in any way for not taking good care of the children. They appear to be physically well taken care of. However, her conduct -- And she's admitted on the stand that she slept with this man -- She denied the number of nights a week, but it's quite apparent that he's there about three (3) nights a week. He's building a home. Apparently he intends to move into that home. The Court must infer that this situation is not conducive to the welfare of the children, at least from the psychological welfare of the children. That husband has tesified he cut down on paying the food bill because he felt that he didn't want to support another man in

his home. I would say that that's a very human feeling. That particularly when the wife admits that this relationship is if not a transitory one, at least she had no intention that it be permanent.

The Court will not find him in contempt for his reduction in the payment of the food bills, for his failure to pay the phone bill, but he is required to make up at the rate of Twenty Five ($25.00) Dollars a month those bills he hasn't paid. He doesn't have to pay long distance charges. He is already ordered to pay Six Hundred ($600.00) Dollars in taxes that he owes within thirty (30) days to her.

The wife, or former wife is ordered to refrain from permitting that man to sleep overnight in her home while the children are present. If she wants to have him on a Saturday night when the

children are with their father, that's her affair, but these weeknights where he is sleeping overnight in her bedroom with a bathroom on their floor which is used by the children even though there's a bathroom in the master bedroom which I assume she uses and her guest uses, the Court doesn't feel that that is a suitable arrangement for the children to be put into. If she married a man, he's the stepfather, nothing could be done about it, but under the situation the Court finds that it is not conducive to the best interest of the children.

This man has paid all the bills. He's done a pretty good job outside of these few items that have been in dispute. In any event, I'll make an order that he is not to pay less than Seventy Five ($75.00) Dollars a week to the wife for groceries and food for the

house. I think there's no question but the trouble started, the Court will find, not when she started to go out with DiPippo, but when she brought him home to sleep overnight in May, and apparently the children were unhappy about that situation and not prepared for it, and it certainly did have an affect on them. Is there anything the Court overlooked?

MR. DeSIMONE: Yes, Your Honor. What bills are owed other than clothing bill?

THE COURT: Well, clothes and taxes.

MR. DeSIMONE: Okay. Few other questions, Your Honor. There's been testimony that she has medical bills and my client's responsible for those, and I bring to the Court's attention Paragraph Fourteen B (14B) of the Property Settlement Agreement and I request a

ruling on whether or not Mr. Parrillo is responsible for medical bills other than Blue Cross?

THE COURT: For the children.

MR. DeSIMONE: Not for the children, Your Honor.

THE COURT: For her, you mean?

MR. DeSIMONE: For the Defendant.

THE COURT: Far as I can see he's more than willing to do anything possible for the children.

MR. DeSIMONE: That's correct, Your Honor.

THE COURT: Paragraph B says that the Husband shall keep in full force and effect Blue Cross-Blue Shield for the children and the wife. No, he's not responsible for any of her medical bills over and above furnishing Blue Cross. Anything else, Mr. Montaquila?

MR. MONTAQUILA: No, Your Honor.

THE COURT: Present an Order.

MR. DeSIMONE: Thank you, Your Honor.

THE COURT: All right.

MR. MONTAQUILA: Thank you, Your Honor.

STATE OF RHODE ISLAND

AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC FAMILY COURT

JUSTIN PARRILLO, JR. :

-VS- : FC NO. P85-3220

CARLA J. PARRILLO :

Heard Before CHIEF JUDGE GOLDBERG

On Thursday, October 23 & 24, 1986

CROSS-EXAMINATION OF CARLA PARRILLO BY MR. DE SIMONE

Q Mrs. Parrillo, you indicated that the last six months, can you be -- strike that. You indicated the last six months that the children's behavior has change, is that correct?

A Somewhat since their dad started with my boyfriend, yeah.

Q Isn't it a fact that the children come home sad and angry from their father's house because they know they are coming to the house where you're living with another man?

MR. MONTAQUILA: Objection.

A No.

THE COURT: Overruled.

Q That's not true?

A That's not true.

THE COURT: Well, ask her the direct question, is there another man that she's not married to living there.

Q Are you living with another man?

A No, I'm not living with another man.

Q You mentioned earlier that you do have a boyfriend, is that correct?

A Yes, I do.

Q And, what's his full name for the record?

A Joseph DiPippo.

Q Was that the gentleman that -- who was seated in this courtroom earlier this morning?

A Yes, it is.

Q Is he still here?

A No, he's not.

Q When did you begin seeing this gentleman?

MR. MONTAQUILA: Objection, Your Honor.

MR. DE SIMONE: Well ----

THE COURT: We're not going to try the divorce case all over again.

MR. DE SIMONE: Your Honor, my intention by asking that question is not trying the divorce again, all my intention is that at some point this gentleman moved into the home, that's why we have this --

THE COURT: All right. Objection overruled. She may answer.

MR. MONTAQUILA: Your Honor, if I may, for the record, even if this woman had this man living in the house everyday, the Property Settlement Agreement and the Final Decree is completely silent on that. In fact, it indicates just the contrary, that she could even be

remarried, it would have no effect on the Plaintiff's obligation under that Property Settlement Agreement.

MR. DE SIMONE: Well, Your Honor, if I may be heard.

THE COURT: Yeah.

MR. DE SIMONE: Irrespective of that, we have filed a motion to modify the Final Judgment, prayer for relief is that Plaintiff is not allowed to have unrelated males living or sleeping overnight in that home while there's three minor children there, and I think this is relevant and it's proper before The Court.

THE COURT: Well, what would you propose to do? Are you asking for change of custody?

MR. DE SIMONE: We're asking that she be restrained and enjoined

from having an unrelated male spend overnight --

THE COURT: And, how old are these children?

MR. DE SIMONE: The youngest is eight and the oldest is 13. And, we're asking for restraining order.

THE COURT: And they are being treated at Providence Mental Health, are they?

WITNESS: No, they are not.

MR. DE SIMONE: They are not being treated by anybody.

THE COURT: They are not being treated by an psychiatrist?

MR. DE SIMONE: No, Your Honor.

THE COURT: Well, 13 year-old boy is certainly cognizant of what's going on in the household, Mr. Montaquila. If she were married to this man, he'd be the kids

stepfather.

MR. MONTAQUILA: Certainly.

THE COURT: But if he's just a guy living there --

MR. MONTAQUILA: He's not living there.

THE COURT: Well, it's a question of fact. He's trying to inquire about that.

MR. MONTAQUILA: Your Honor, if he can prove that, that's fine, but -- but even assuming that's the case, my brother would have to establish that it's having a negative effect on the children in order to make any changes, and I submit that this ---

THE COURT: Didn't she just tell us about the children coming home sad?

MR. DE SIMONE: That's correct.

THE COURT: And -- and from the

visits with the father?

WITNESS: That's because of the father's feelings.

MR. MONTAQUILA: You stopped my line of questioning, Your Honor, but I -- I submit as an offer of proof that what will come out is the statements made by the Plaintiff in this matter about the Defendant that makes the children upset.

THE COURT: I told you, wait until you put the Plaintiff on and examine him. She wasn't there, but she had told us that the children are sad on certain occasions or the other word was "angry".

MR. MONTAQUILA: But unrelated to the fact this man is living in the house.

THE COURT: How do we know? It would seem to me that a 13 year-old

boy or girl who sees their mother sleeping with another man that she's not married to, might have problems, and it's demonstrated time and again in divorce cases.

MR. MONTAQUILA: There's no evidence before this Court, Your Honor, concerning --

MR. DE SIMONE: Your Honor, that's what I'm attempting to show.

MR. MONTAQUILA: I don't think you can take judicial notice of that.

THE COURT: What?

MR. MONTAQUILA: I don't believe we can take judicial notice of that.

THE COURT: We don't take judicial notice of anything that's usually proved by evidence. We take judicial notice of calendars and things of that nature.

MR. MONTAQUILA: My objection,

Your Honor, was to the fact he's assuming a fact not in evidence.

* * * *

THE COURT: Objection sustained. The answer may be stricken. Well, have you indicated to your children he plans to marry you or you to him, or what?

WITNESS: Not at this time.

THE COURT: Have the children said anything to you about Joe, what's Joe doing in our home and so on?

WITNESS: They like Joe, yeah.

THE COURT: Have they said anything, I didn't ask you whether they like him or not?

WITNESS: They asked me if I like him and I said "yeah" and they ask me, you know, what we do and I

say "we go out and do different things just like normal people do."

Q Do you have any intention of marrying him in the near future?

A Not in the near future, no.

* * * *

(CHIEF JUDGE WILLIAM R. GOLDBERG'S INTERVIEW WITH PARRILLO CHILDREN IN CHAMBERS WITHOUT PRESENCE OF PARENTS. MR. THOMAS R. DeSIMONE, ATTORNEY FOR FATHER WAS PRESENT. MR. ARNOLD N. MONTAQUILA, ATTORNEY FOR MOTHER WAS PRESENT.)

THE COURT: All right, now who is the youngest in here?

GIRL: Here.

THE COURT: What's your name?

GIRL: Candace.

THE COURT: Candace?

GIRL: Yes.

THE COURT. Keep a loud voice. How old are you, Candace?

CANDACE: Eight (8).

THE COURT: And do you know what your birthdate is?

CANDACE: Yes, Sir. May 10th.

THE COURT: May 10th. All right, and the next one in here?

GIRL: Here.

THE COURT: What's your name?

GIRL: Olivia.

THE COURT: How old are you?

OLIVIA: Ten (10).

THE COURT: And what is your birthday?

OLIVIA: December 27th.

THE COURT: December or September?

OLIVIA: December.

THE COURT: December 27th?

OLIVIA: Yes.

THE COURT: Right after Christmas. And what's your name?

BOY: Albert.

THE COURT: Albert. And how old are you, Albert?

ALBERT: Thirteen (13).

THE COURT: And what's your birthday?

ALBERT: October 5th.

THE COURT: You just had a birthday?

ALBERT: Yes.

THE COURT: All right. Now, there's been some question about where you children sleep. Let's start with Albert. Where do you sleep in the house, Albert?

ALBERT: Downstairs.

THE COURT: You have your own bedroom?

ALBERT: Yep.

THE COURT: And do you visit with your father?

ALBERT: Yes.

THE COURT: Do you enjoy visiting with your father?

ALBERT: Yes.

THE COURT: No problem there?

ALBERT: No.

THE COURT: All right. And Olivia, where is your bedroom?

OLIVIA: Upstairs.

THE COURT: Do you have a bedroom to yourself, or do you share it with your sister?

OLIVIA: Myself.

THE COURT: You have your own bedroom?

OLIVIA: Yes.

THE COURT: And Candace, do you have your own bedroom?

CANDACE: Yes.

THE COURT: Where is it, upstairs or downstairs?

CANDACE: Upstairs.

THE COURT: Now, are there bathrooms on both floors upstairs and downstairs?

CHILDREN: Yes, two (2) upstairs.

THE COURT: One at a time. I'll ask Albert.

ALBERT: Two (2) upstairs. One (1) in my mom's room and one (1) --there's another one.

THE COURT: One (1) in the Master Bedroom?

ALBERT: Yes.

THE COURT: And then one (1) upstairs for the other bedrooms, is that right?

ALBERT: Not in other bedrooms.

THE COURT: For people in other

bedrooms?

ALBERT: Yes.

THE COURT: That they use?

ALBERT: Yes.

THE COURT: There's another bedroom that that bathroom is not in with Master Bedroom, right?

ALBERT: Yes.

THE COURT: You two (2) girls use that bathroom, is that right?

CANDACE: Yes.

OLIVIA: Yes.

THE COURT: Now, do you have a bathroom downstairs, Albert?

ALBERT: No, Sir.

THE COURT: You have to go upstairs to the bathroom?

ALBERT: Yes.

THE COURT: Is this a regular two (2) story home, or is it sort of a split-level home?

ALBERT: Well, downstairs was a basement, but when my dad was living there he fixed it up, and there's a parlor down there and there's a bedroom downstairs there.

THE COURT: Where are the living quarters, on the second floor?

ALBERT: Yes.

THE COURT: The kitchen?

ALBERT: Kitchen is on the second floor.

THE COURT: And eating quarters?

ALBERT: Yes. Dining room.

THE COURT: You have a dining room, do you?

ALBERT: Well, it's built into the kitchen.

THE COURT. I see. Yes. Now, how is your visits, it is all right with your dad?

ALBERT: Yes.

THE COURT: And how about you, girls?

CANDACE: Yes.

OLIVIA: Yes.

THE COURT: How often does he take you?

OLIVIA: When we get home from school. Eight o'clock or something. And Saturday is from sometime he picks us up maybe 1:00, 2:00, three o'clock, and we stay with him until Sunday at five o'clock.

THE COURT: Now, does he have a home that he has bedrooms for you and things like that?

OLIVIA: Yes.

CANDACE: We have bunk beds.

THE COURT: Bunk beds?

CANDACE: Yes.

THE COURT: I see. And you girls share a bedroom with bunk beds?

OLIVIA: Yes.

THE COURT: And brother, where do you sleep when you go with your father?

ALBERT: Well, like downstairs. I like sleeping downstairs because there's a TV down there and a couch that opens up into a bed, but all my -- like all my clothes are upstairs in the other room, and when they're not there, I sleep in their room.

THE COURT: What?

ALBERT: I said that when they are not sleeping in their room, I sleep in there.

THE COURT: I see.

ALBERT: It's like all of our room.

THE COURT: Now, is there another man in your house, Albert?

ALBERT: Yes.

THE COURT: In your own home?

ALBERT: Yes.

THE COURT: What's his name?

ALBERT: Joe DiPippo.

THE COURT: Joe DiPippo?

ALBERT: Yes.

THE COURT: Joe DiPippo. Yes, that's the name I heard yesterday. Now, how often does he sleep overnight in your house?

ALBERT: About two (2) or three (3) times a week. Because he's like, he's like getting a new house, and his house ain't quite done.

THE COURT: Have you ever seen it or gone over to look at it.

ALBERT: Well, I have.

OLIVIA: I haven't.

THE COURT: And Candace?

CANDACE: I haven't.

THE COURT: How do you three (3) children get along with Joe DiPippo?

OLIVIA: Good.

THE COURT: What?

OLIVIA: Good.

THE COURT: Well, do you know-- What about you, Candace?

CANDACE: Well, yes. Kind of.

THE COURT: What about you, Albert?

ALBERT: Yes. Pretty much.

THE COURT: Sometimes he stays more than two (2) or three (3) nights?

OLIVIA: Yes. He doesn't stay one time Wednesday either. He sleeps at sister or at airport.

THE COURT: Did you talk to your mother about this, did she talk to you about this last night?

OLIVIA: Yes.

CANDACE: Yes.

ALBERT: Yes.

THE COURT: And she told you about him staying at the airport and things like that?

ALBERT: Yes.

GIRLS: Yes.

THE COURT: Of course you children know that you have to tell the absolute truth in here?

ALBERT: Yes. They told us to tell the truth.

THE COURT: Yes. So some nights--Some weeks he's there all week, is that it?

OLIVIA: If he doesn't have to work.

THE COURT: Yes. And your mother gets the meals for him and he eats with the family, is that right?

OLIVIA: Well, most of the time he cooks if my mother doesn't feel well.

THE COURT: Oh, he cooks?

OLIVIA: He helps.

ALBERT: Yes.

THE COURT: Do you eat all right, do you eat good?

GIRLS: Yes.

ALBERT: Yes, Sir.

THE COURT: Now, freezer all empty now, is that right?

OLIVIA: No.

CANDACE: No.

THE COURT: Oh, you got meat in the freezer again?

GIRLS: Yes.

ALBERT: Yes.

THE COURT: When did you get that?

ALBERT: Well, we get like hamburg, and my grandfather just give us something.

THE COURT: When was that?

ALBERT: Well, this week, and my mom buys meats and stuff.

THE COURT: But when your dad left, wasn't there a freezer full of meats?

OLIVIA: Yes, Well, once like ten (10) meats.

THE COURT: What happened to that?

OLIVIA: Well, one time it shut off and most of the stuff got bad. My mother cooked it and froozed it again. Half of the stuff. So we ate most of that.

THE COURT: Yes.

CANDACE: And got half left.

THE COURT: You still got that big white freezer?

ALBERT: Yes.

THE COURT: It's almost empty?

OLIVIA: It's empty.

ALBERT: Completely empty.

THE COURT: Now, this other meat is in your other freezer?

ALBERT: In refrigerator/freezer our icebox.

THE COURT: I see. That's what I use to call the refrigerator, the icebox. I haven't heard it referred like that in a long time. All right. Now, Albert, what grade are you in in school?

ALBERT: Seventh (7th).

THE COURT: What grade are you in, Olivia?

OLIVIA: I'm in sixth (6th).

THE COURT: Sixth (6th) grade. And Candace, how about you, what grade are you in?

CANDACE: Third (3rd).

THE COURT: Third (3rd) grade?

CANDACE: Yes.

THE COURT: Are you all doing well in school?

GIRLS: Yes.

ALBERT: Yes. Pretty much.

THE COURT: Do you do your homework at night, or do you watch TV?

GIRLS: Watch TV.

ALBERT: I do my homework after supper.

THE COURT: When do you shut off the TV, or don't they ever shut off the TV?

OLIVIA: They shut it off when we go to bed.

CANDACE: Sometimes we go to bed when they're still watching it. I got one in my room, so I watch it in my room.

THE COURT: You do?

CANDACE: Yes.

THE COURT: All right. Is there anything you children would like to tell me about homelike or visits with your dad or anything like that, whether you like to have more visits with your dad, or--I don't know how we can do it--Does he see you every week?

OLIVIA: Yes. He sees us like Saturday.

CANDACE: Sometimes we sleep over Saturday until Sunday, and then Wednesday he takes us.

THE COURT: Birthdays does he take you?

GIRLS: Yes.

THE COURT: Christmas?

GIRLS: Yes.

THE COURT: Thanksgiving?

GIRLS: Yes.

ALBERT: My dad said that maybe like when everything gets settled that maybe I could sleep or--Well, not right now, but sometimes I could sleep over his house and walk to school sometimes.

THE COURT: Does he live near your school?

ALBERT: Yes. He lives right up the street from my school.

THE COURT: Yes. Well, whenever that time comes. What school do you go to?

ALBERT: I go to Junior Hight. Ferri Middle School.

THE COURT: What Town?

ALBERT: Johnston.

THE COURT: Johnston. And do you go to the Middle School too, Olivia?

OLIVIA: No, I go to Thornton.

THE COURT: Thornton School?

OLIVIA: Yes.

ALBERT: Her and I, Olivia....

OLIVIA: Oh, be quiet.

THE COURT: What did you say?

ALBERT: Well, she said something incorrect.

THE COURT: What?

ALBERT; She said her. It's suppose to be her and I.

THE COURT: All right. I think your brother is going to be a lawyer. He certainly is a nice looking boy. All three (3) of you children are nice looking children. You're nice and clean and well dressed, and it's nice to see you kids. Did you have to wait a long time to come in here?

ALBERT: No, Sir.

THE COURT: Okay. Are there any questions that the lawyers would like

me to put to the children?

MR. MONTAQUILA: I don't think so, Your Honor.

MR. DE SIMONE: Other than, Your Honor, when they left their father's house--When they leave their father's house and come back after, you know, and why.

THE COURT: Was there any problem about that? I don't remember any.

MR. DE SIMONE: Well, there was testimony since May.

THE COURT: That what?

MR. DE SIMONE: There was testimony that when they left from their father's visit they would return home.

THE COURT: Oh, yes, I remember that, yes.

MR. DE SIMONE: Something along

that line.

THE COURT: Yes, I know what you mean. I think that's an area that I should cover. After you visit, kids, do you feel bad when you go home, or are you angry at your mother or anything like that when you get home?

ALBERT: No.

OLIVIA: Sometimes we do.

THE COURT: Sometimes?

OLIVIA: Yes.

THE COURT: Depends on each one of you, but as a group are you depressed when you get home after a visit?

ALBERT: I get depressed because I got school the next day. That's just about it.

THE COURT: You mean the holiday is all over, is that it?

ALBERT: Yes.

THE COURT: What do you do with your dad, do you go to the park?

ALBERT: We play football a lot, and sometimes we go to the movies or the Mall.

CANDACE: One time we went to Rocky Point.

THE COURT: Do you go to Wendy's or Burger King?

ALBERT: Yes, he takes us to Burger King.

THE COURT: Yes. Okay. I'm awfully glad to meet you kids.

ALBERT: Thank you.

THE COURT: And I'm sure that we'll try to work things out so you kids won't suffer by it.

MR. DE SIMONE: Excuse me, Your Honor.

THE COURT: Yes.

MR. DE SIMONE: You mind if I ask

a couple of questions?

THE COURT: Yes. I want questions directed to me and I'll ask the questions.

MR. DE SIMONE: I like to know if they have a choice of....

THE COURT: No, I'm not going to do that.

MR. DE SIMONE: Okay.

THE COURT: And have them tell me that they would rather be with their father or mother or whatever. They are the victims of divorce.

MR. DE SIMONE: I don't mean that way.

THE COURT: I'm sure that they each would rather see their father and mother together taking care of them at home, but we can't help that, that's the system.

MR. DE SIMONE: I didn't mean it

in that regard.

THE COURT: What did you mean?

MR. DE SIMONE: What I meant was whether or not they have a feeling about other people staying at their home.

THE COURT: Well, their mother has already admitted that she's in that bedroom with him. There's no sense in having the children involved in that.

MR. DE SIMONE: I just like to introduce myself to the children.

THE COURT: What?

MR. DE SIMONE: I just like to introduce myself to the children.

THE COURT: What?

MR. DE SIMONE: I just like to introduce myself to the children.

THE COURT: All right. This is your dad's lawyer, Mr. DE SIMONE.

MR. DE SIMONE: Hi, how are you?

THE COURT: And this is your mother's lawyer, Mr. Montaquila.

MR. MONTAQUILA: Hi.

THE COURT: That's it. I'm sorry. I should have introduced you in the beginning.

ALBERT: That's okay.

THE COURT: But this is kind of routine and I just want to be sure that under the circumstance you're as happy as you can be. Nobody likes their daddy living out of the house and their mother with stepfather or some man living there, but that's the way it is. As long as he's not abusive to you children. Has he ever struck you or anything like that?

ALBERT: Not me.

THE COURT: You have to tell me the truth, Olivia, has he ever struck

you?

OLIVIA: No. Only say if we did something bad he might yell at us, but not, you know, hard, you know.

THE COURT: Now, what about you, Candace?

CANDACE: No, not really.

THE COURT: No. All right. And you, Albert?

ALBERT: No.

THE COURT: You get along pretty good with him?

ALBERT: Yes. Sometimes I don't like him. Sometimes.

THE COURT: Okay. I know. I wish I could do something to help you out. Maybe if your dad and mother had come in here in the first place we might have helped them stay together, but I guess there were some real fights there at one time. How

long is it since your mother and dad be apart, separated?

OLIVIA: About a year.

THE COURT: About a year. Is that all it is, a year?

ALBERT: Got to be two (2) years. I say about two (2) years.

OLIVIA: Something like that. A year and a half or something.

THE COURT: Is there a den door broken in your house?

ALBERT: Yes.

THE COURT: Yes. You don't know anything about how it happened now?

CANDACE: No.

OLIVIA: No.

ALBERT: No, Sir.

THE COURT: Okay, kids, glad to see you. You can go back. Albert, let me shake hands with you.

ALBERT: Okay.

THE COURT: Yes. All right.

ALBERT: Bye, Your Honor.

THE COURT: Yes. Bye. Bye, Candace.

CANDACE: Bye.

* * * *

THE COURT: Well, that isn't occasionally when man is said to sleep at airport on certain nights and so on in conformance with his duties at that airport he would sleep away. Apparently he made this his home.

MR. MONTAQUILA: There's been no testimony on record of that.

THE COURT: I can draw inferences. All right.

MR. MONTAQUILA: And Your Honor, with regard to the children and the

affect it has on the children. I would submit to the Court there's been no showing at all it has adversed affect on children, and I'll go to a step further, Your Honor. We would have no objection to a child psychologist appointed by the Court with expense to be split equally between the parties to see these children.

THE COURT: Mr. Montaquila, isn't the testimony that the boyfriend is buying a house and will be ready very shortly?

MR. MONTAQUILA: That's correct.

THE COURT: Well, if he gets out and goes to that house, that will solve the problem.

MR. MONTAQUILA: Your Honor, the problem that exist isn't with the man living there, it's with him staying

overnight occasionally. Now, I don't think we can restrict Mr. Parrillo, and I don't think we can restrict Mrs. Parrillo from carrying on relationship with other individuals as long as it doesn't have an adversed effect on children.

THE COURT: Well, there's the crux of it, the affect on children.

MR. MONTAQUILA: That's it exactly.

THE COURT: And do you think we're going to permit a situation where there is no intention of marriage to continue such as we got the facts here?

MR. MONTAQUILA: Your Honor----

THE COURT: To continue on indefinitely?

MR. MONTAQUILA: Your Honor----

THE COURT: With the children

growing older and their aggravation to this living arrangement with this man living in their home who is not their father?

MR. MONTAQUILA: No evidence introduced to that effect whatsoever. That's an assumption the Court made.

THE COURT: I'm not making assumptions. I'm telling you the possible inferences that can be drawn from the testimony.

MR. MONTAQUILA: Your Honor, if the man moved into the house and lived together as common-law husband and wife, I don't think that's--unless there's a showing--that's adversed against children, that this Court should or this Court could interfere with that relationship.

THE COURT: All right.

MR. MONTAQUILA: And essentially, Your Honor, with regard for showing of reasonableness of clothing, heat, telephone, electricity, I think the Court has ample experience to draw it's own conclusions with regard to what the reasonableness will be. There's been no objection to the fact that Mrs. Parrillo needs approximately Four Hundred Fifty ($450.00) Dollars for her children and for herself. That hasn't been unreasonable. Grocery bill of a Hundred Dollars a week, One Hundred Five ($105.00) Dollars a week hasn't been attacked as being unreasonable. In fact, the children in chambers confirmed the fact that the big freezer use to be full, is shut down now, and empty. So with regard to what's reasonable, Your

Honor, I think that we can rely on discretion of the Court as far as what's reasonable.

THE COURT: All right.

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STATE OF RHODE ISLAND FAMILY COURT
PROVIDENCE, SC

JUSTIN A. PARRILLO JR. :

VS : F.C. NO. P 85-3220

CARLA PARRILLO :

ORDER

This matter came on to be heard before Mr. Chief Justice Goldberg on October 23 and October 24, 1986 and after hearing thereon and in consideration thereof it is

ORDERED ADJUDGED AND DECREED

1. The defendant's motion to adjudge plaintiff in comtempt is denied.

2. The defendant's motion to modify is denied.

3. The plaintiff is not responsible to pay for any repairs that may be

necessary at the defendant's property or house.

4. The plaintiff is not responsible to pay for any of defendant's medical bills.

5. The plaintiff shall not pay less than $75.00 per week for the food bill for the defendant and the minor children.

6. The plaintiff owes defendant the sum of$606.00 for real estate taxes. Plaintiff shall pay the full amount within 30 days.

7. The plaintiff shall pay the sum of $25.00 extra per month to defendant for the clothing bill which is approximately $457.00.

8. The plaintiff is restrained and enjoined from harrassing, molesting, annoying or otherwise bothering the defendant at home or else where.

9. The defendant is restrained and enjoined from allowing any unrealted males stay overnight or living at the defendant's residence when the minor children are present.

10. The defendant is further ordered from allowing Mr. Joseph DiPippo from staying at her residence when the minor children are present.

11. The plaintiff is awarded visitation with minor children as follows: Saturdays 1:00 p.m. to Sunday 5:00 p.m. and weekdays: Wednesdays 5:00 p.m. to 10:30 p.m. during the summer, and weekdays during the school year Wednesdays 5:00 p.m. to 9:00 p.m.

A PERSON WHO VIOLATES THIS ORDER MAY BE GUILTY OF A MISDEMEANOR AND MAY BE PUNISHED BY A FINE OF AS MUCH AS FIVE HUNDRED ($500.00)

DOLLARS OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE (1) YEAR, OR BOTH"

Entered as an Order of this Court this day of November, 1986.

APPROVED

FAMILY COURT JUSTICE

PER ORDER

CLERK

PRESENTED BY

THOMAS R. DESIMONE

CERTIFICATION

I hereby certify that I mailed a copy of the within to Arnold Montaquila, Esquire, 1136 Hartford Avenue, Johnston, RI 02919 on this 29th day of October, 1986.